IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2194 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Sanjay S. Gole & Ors. ..Respondents.

....

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

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WITH
WRIT PETITION NO.2195 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Prabhakar G. Kadam & Ors. ..Respondents.

....

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

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WITH
WRIT PETITION NO.2220 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Narhari R. Gole & Ors. ..Respondents.

...

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.

Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Mr. V.M. Phal, AGP for the State.

WITH
WRIT PETITION NO.2229 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Vaishali K. Raut & Ors. ..Respondents.

....

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Mr. V.M. Phal, AGP for the State.

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WITH
WRIT PETITION NO.2243 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Santosh P. Matkari & Ors. ..Respondents.

...

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

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WITH
WRIT PETITION NO.2244 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Vishnu S. Ugle & Ors. ..Respondents.

....

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.

Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

WITH
WRIT PETITION NO.2277 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Chandrakant S. Pawar & Ors. ..Respondents.

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Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

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WITH
WRIT PETITION NO.2310 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Sandeep T. Phansekar & Ors. ..
Respondents.

....

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

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WITH
WRIT PETITION NO.2311 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Nitin H. Khare & Ors. ..Respondents.

...

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

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WITH
WRIT PETITION NO.2332 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Tushar V. Lodh & Ors. ..Respondents.

....

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Mr. P.G. Sawant, AGP for the State.

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WITH
WRIT PETITION NO.2333 OF 2006

Siddheshwar Co-operative Housing
Society Limited ..Petitioners.
Vs.
Ankush R. Kamble & Ors. ..Respondents.

....

Mr. Ketan Chotani with Mr. S.S. Jagtap for the Petitioners.
Mr. A.Y. Sakhare, Senior Advocate for Respondent No.1.
Mr. S.M. Dharap with Mrs. Anjali Helekar for Respondent No.2.
Ms. Mamta Sadh, AGP for the State.

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CORAM: DR. D.Y. CHANDRACHUD, J.

25th September, 2006.

P.C. :

1. The Petitioner is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. The original members of the co-operative society are approved members of a statutory body called the Metal (excluding Iron and Steel) and Paper Markets and Shops Mathadi Labour Board. The Board has been constituted as a statutory authority under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969. A scheme of 1973 has been framed under the Act. Among the functions of the Board under clause 6(xii) of the scheme is assisting by way of loans or otherwise, co-operative societies formed for the benefit of registered workers and staff of the Board.

2. By an order dated 16th November, 1978 the Government of Maharashtra allotted land admeasuring 6 Acres and 20 Gunthas out of Survey No.14 at Chembur to the Mathadi Board for the use of the members of the Board, on a lease of 99 years. Clause 6 of the order of allotment reads as follows :

> "6. The lessees shall utilise the land only for construction of residential tenements for their approved members and for no other purpose."

Under clause 10, it was then prescribed thus :

> "10. The lessees shall not permit any of their members to lease or to sub-let or to give on leave and licence basis or to transfer the tenements held by him/her without the written prior permission of the Government."

3. Since a co-operative society had not been formed at the relevant time, the Mathadi Board which is impleaded in these proceedings as the Second Respondent entered into individual agreements with approved members who were eligible for allotment of tenements in the housing project undertaken by the Board. The individual agreements referred in the recitals of each of them to the order dated 16th November, 1978 by which the land was allotted by the Government of Maharashtra. Clause 13 of each agreement contained the following stipulation:

> "13) The buyer shall not let, sub-let, lease, or sub-lease or part with possession or sell, transfer, assign or to give on leave and licence basis or transfer or convey or dispose of the said

> tenement or any part thereof without the prior permission in writing of the Government and the Board."

4. The First Respondent and other ten persons all of whom are before the Court in the companion petitions claim to have purchased tenements from approved members of the Board. The Court has been informed that five buildings have been completed as part of the housing project. The housing project is still not complete. The Petitioner society has under its control three buildings covering a total of 120 flats. It is not disputed before the Court that all the 11 transferees governed by these proceedings are not approved members of the Mathadi Board and are strangers to the Board. The Collector, Mumbai Suburban District was moved on behalf of the subsequent transferees for the grant of permission by the State Government for transfer of the tenements by the original allottees. By an order dated 27th August, 2004 the Collector, relying on a Government Resolution dated 9th July, 1999 granted permission subject to the deposit of an amount of Rs.25,000/- by each allottee and compliance with certain other

conditions. On 11th May, 2005, the co-operative society submitted a representation to the Collector recording objections to the order dated 27th August, 2004. On 15th June, 2005 after holding a hearing, the Collector informed the parties that it will be open to the purchasers of the tenements and the co-operative society to approach the competent Court for resolving their grievances. The purchasers of the tenements moved the District Deputy Registrar under Section 23(2) of the Maharashtra Co-operative Societies Act and an order was accordingly passed on 16th August, 2005 directing the Petitioner to enroll the purchasers as members. This order was confirmed in revision by the Divisional Joint Registrar on 26th June, 2006.

5. Both the District Deputy Registrar and the Divisional Joint Registrar in revision have relied on the order passed by the Collector on 27th August, 2004 granting permission for the transfers. The order passed by the Collector on 27th August, 2004 has not been challenged before this Court in present proceedings. Both the learned AGP on the one hand and counsel appearing on

behalf of the First Respondent to this batch of Petitions have submitted that in the absence of any valid challenge to the order passed by the Collector, the order passed by the District Deputy Registrar directing the grant of membership to the purchasers of the tenements in question cannot be faulted. On behalf of the Petitioner as well as on behalf of the Second Respondent which is the Mathadi Board, it has been submitted that the Board has been constituted in pursuance of the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and the scheme which has been made with reference to the provisions of the Act. The Board is authorized to adopt welfare measures and a housing project for the approved members of the Mathadi Board, is one such measure that has been pursued by the Board. On behalf of the Board, it was urged that the order passed by the Collector on 27th August, 2004 proceeds on the basis that the Government Resolution dated 9th July, 1999 would apply. However, it has been submitted that ex facie, the Government Resolution applies only to co-operative societies set up by private individuals and would have no

application in a situation where an allotment of land has been made by the State Government to a statutory board for the purpose of fulfilling the objects and purposes of an enactment, such as the Mathadi Act in the present case.

6. In these proceedings, it would not be either appropriate or open for this Court to consider the correctness of the s order passed by the Collector on 27th August, 2004 since there is no challenge to that order. The prayer clauses in the petition are confined to a challenge to the order passed by the Divisional Joint Registrar confirming in revision the order of the District Deputy Registrar directing the co-operative society to admit the subsequent transferees as its members. The orders passed by the District Deputy Registrar and by the Divisional Joint Registrar proceed on the basis that permission has been granted by the State Government for effecting transfers. Clause 10 of the order of allotment dated 16th November, 1978 specifically requires the prior written permission of the State Government. In this case, it is now an undisputed position that permission has been granted by the

government, though subsequently, and that permission continues to hold the field. At the same time, it would in my view be appropriate, in view of the submissions which have been made on behalf of the Petitioners and the Board to reserve liberty to the Petitioners, and/or to the Board, if they are so aggrieved to challenge the order passed by the Collector on 27th August, 2004. Both the Petitioners as well as the Board made before the Court a submission in regard to the applicability of the Government Resolution dated 9th July, 1999. By the aforesaid Government Resolution, the government modified the terms under which allotments of land were made to co-operative societies, by the Government. Clause 9(a) of Annexure B to the Government Resolution contemplates transfers of tenements in co-operative societies set up by the private individuals after the lapse of 5, 10 or 15 years as the case may be. According to the Petitioners and the Board, the Government Resolution does not apply to transfers of tenements in housing projects such as the present where land is allotted to a statutory board since the Resolution applies to co-operative societies set up by private individuals. The letter of the

Collector dated 27th August, 2004 granting permission for transfer, relies on the aforesaid Government Resolution but the letter has not been questioned before the Court. In the absence of a challenge to the decision of the Government to grant permission to transfer the tenements, the order directing the co-operative society to admit the purchasers to membership, which is consequential in nature, cannot be faulted.

7. In these circumstances, the Petitions shall stand disposed of with the following directions :

i) On the request of counsel for the Petitioner and the Second Respondent it is clarified that the aforesaid parties would be at liberty to pursue their remedy under Section 247 of the Maharashtra Land Revenue Code 1960 against the order passed by the Collector on 27th August, 2004. It will be open to the aforesaid parties, in appeal to move the Government for the grant of interim relief;

ii) In the event, that the Petitioners are unable to obtain any order from the competent forum staying the operation of the order dated 27th August, 2004, the Petitioners shall comply with the order of the District Deputy Registrar dated 16th August, 2005 as confirmed in revision on 26th June, 2006 upon the expiry of a period of three months from today;

iii) All the rights and contentions of the First Respondent in regard to the maintainability of the appeals and the delay, if any, in preferring the appeals are expressly kept open.

(iv) The First Respondents to these proceedings agree to furnish a complete set of copies related to the proceedings forming the subject matter of the present case. This shall be done subject to the payment of costs, charges and expenses within a period of two weeks from today.

(v) In the event that the order passed by the Collector on 27th August, 2004 is quashed and set aside, the question as to the

entitlement of the purchasers to the membership of the co-operative society shall be considered afresh by the competent authority in accordance with law.

The Petitions are accordingly disposed of with the aforesaid directions.